FILE COPY

No., 821

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

R. C. OWEN COMPANY, PETITIONER,

vs.

UNITED STATES OF AMERICA, DEFENDANT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY BRIEF OF PETITIONER

WILLIAM WALLER
American Trust Building
Nashville 3, Tennessee
Attorney for Petitioner

Of Counsel:
WALLER, DAVIS & LANSDEN
American Trust Buildin,
Nashville 3, Tennessee

No. 821.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

R. C. OWEN COMPANY, PETITIONER,

vs.

UNITED STATES OF AMERICA, DEFENDANT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY BRIEF OF PETITIONER

It is believed that the description of the "voting rights" of the debenture holders contained in the government's brief in opposition is inaccurate; and since great stress was laid by the Court of Claims on these voting rights, and similar stress is laid on them in the brief in opposition, petitioner desires to make a brief reply.

In the brief in opposition (p. 4) it is said that "any and all provisions and agreements" of the debentures "may be changed, altered, or amended, by written vote of the holders of 75% of the principal amount thereof." Actually the provisions of the debentures may be changed only "in so far as they affect the holders hereof." (Finding of Fact 4(b), Pet. 23). While this language is per-

haps inexact, the meaning undoubtedly was that provisions with respect to group action by debenture holders could be changed in this manner. Trust indentures frequently provide for meetings of security holders to take action with respect to defaults, to remove a trustee or appoint a successor trustee, to consent to the execution of supplemental indentures, etc.; and 15 U. S. Code, Sec. 77ppp (Trust Indenture Act of 1939, Aug. 3, 1939, c. 411, 53 Stat. 1172) gives specific authorization to provisions for voting on such matters.

The brief in opposition also states (pp. 4, 6, 8) that upon default the debentures could be declared due and payable only upon the vote of 75% of the holders thereof; and it is then argued (p. 8) that "there was no fixed right to payment in the event of default—an indication of the absence of a true indebtedness." But the debentures simply provided that there could be no *acceleration* of maturity because of default except by consent of the holders of 75% of the debentures. This is a customary and appropriate provision and is not, as the Court of Claims thought (Pet. 16) and as the government now argues (p. 8), a characteristic of capital stock. Contrary to the argument of the government, each debenture holder has the right to sue individually for either interest or principal, or both, in the event of default in the payment thereof when due.

The government argues that *Rowan v. United States*, 219 F. 2d 51 (C. A. 5), *Kraft Foods Co. v. Commissioner*, 232 F. 2d 118 (C. A. 2), and *Miller's Estate v. Commissioner*, 239 F. 2d 729 (C. A. 9), are not in conflict with the decision below because of "significantly different factual situations." The voting rights of the debenture holders do not, however, constitute a *significant* difference, when properly understood. The decision below is fundamentally irreconcilable with the cases cited, particularly *Miller's Estate*, in which the determinative facts were

with the exception of the "voting rights," substantially similar.

Respectfully submitted,

WILLIAM WALLER,
Attorney for Petitioner.

WALLER, DAVIS & LANSDEN
Of Counsel

June, 1960.